

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Revenue Recapture Appeal Hearing of Dustin Nass	ORDER ON MOTION FOR SUMMARY DISPOSITION
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The above-entitled matter came on for a motion hearing by telephone before Chief Administrative Law Judge Raymond R. Krause on July 28, 2009, on the Department of Correction's summary disposition motion pursuant to Dustin Nass' notice requesting a hearing to contest the revenue recapture of supervision fees issued for his term of supervised release. The record with respect to the motion also closed on July 28, 2009.

Krista Guinn Fink, Associate Legal Counsel, appeared for the Department of Corrections (Petitioner or Department). Dustin Nass (Respondent¹) appeared on his own behalf.

Based upon the memoranda of counsel and of all the files, records, and proceedings, the Chief Administrative Law Judge makes the following:

ORDER

1. The Department is not exempt from the requirement to hold a revenue recapture contested case proceeding under Minn. Stat. § 270A.09.

2. The Department's motion for summary disposition is GRANTED. The Department may proceed with revenue recapture against Mr. Nass without further proceedings.

¹ For the purposes of the Order on Motion for Summary Disposition, the ALJ refers to Mr. Nass as "Respondent." Please note that the Department referred to itself as "Respondent" in its exhibit submissions. The citations to the Department's exhibits in this Order are therefore labeled "Respondent's" Appendix to match up with the Department's exhibit labeling while still distinguishing between the Department and Mr. Nass.

Dated: August 20, 2009

s/Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

NOTICE

This Order constitutes a final decision. Any party aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §14.63 to §14.68 (2008). Any appeal must be filed with the Minnesota Court of Appeals and served upon the other party within thirty days of the receipt of this Order.

MEMORANDUM

Issues

1. Does the Commissioner's exemption from the contested case procedures under Minn. Stat. §14.03, subd. 2(b) (2008) also exempt the Department from the revenue recapture contested case procedures under Minn. Stat. §270A.09 (2008)?

2. If not, is summary disposition appropriate against the Respondent and in favor of the Department?

Facts

The Department obtained custody over the Respondent on October 6, 2008 for an 18-month Second Degree Arson sentence.² The Respondent served his imprisonment term of two-thirds of an executed sentence less any disciplinary time as per Minn. Stat. §244.01, subd. 8 (2008).³ The Department released the Respondent to supervised release in the custody of the Commissioner of Corrections on March 9, 2009.⁴ By letter dated March 3, 2009, the Department notified the Respondent of his requirement to pay \$300 in supervision fees.⁵

² "Respondent's" Appendix, p. 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at p. 2.

The Respondent violated his release conditions when he left the Red River Recovery Center for work on April 9, 2009 and did not return.⁶ He was arrested at a Fargo residence on April 29, 2009 and was directed by special condition to enter and complete chemical dependency treatment.⁷ The Department revoked the Respondent's supervised release on May 18, 2009.⁸ In accordance with Department policy, any outstanding supervision fee balance is immediately submitted for revenue recapture upon the revocation of supervised release and return to incarceration.⁹ The Department advised the Respondent of its revenue recapture claim and his right to contest the claim by letter dated May 18, 2009.¹⁰ The Respondent informed the Department of his decision to contest the revenue recapture claim on May 28, 2009.¹¹ The Respondent stated:

I am exeperating [sic] my sentence. I don't see why I'm being charged a [\$]300.00 supervision fee if I'm not being supervised by your department. I made it 1 month with your supervision not 6 months. I would like a hearing or something.¹²

The Department subsequently initiated the present action under the contested claims procedure in Minn. Stat. § 270A.09 to determine whether the Respondent should be required to pay his outstanding balance of \$300 in supervision fees. The Department moved for summary disposition of the matter by motion dated July 17, 2009.

Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment.¹³ The administrative law judge must grant the motion if the pleadings, depositions, interrogatory answers, and admissions on file, together with the affidavits, if any, show there are no genuine issues of material fact and that either party is entitled to a judgment as matter of law.¹⁴ The ALJ must view the evidence in the light most favorable to the non-movant and draw factual inferences against the movant.¹⁵

⁶ *Id.* at p. 3.

⁷ *Id.*

⁸ *Id.*, at p. 3-4.

⁹ *Id.* at p. 8.

¹⁰ *Id.* at p. 5.

¹¹ *Id.* at p. 6.

¹² *Id.*

¹³ See *Pietsch v. Minnesota Bd. Of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004); Minn. R. Civ. P. 56.03.

¹⁴ Minn. R. Civ. P. 56.03; *Isle Wellness, Inc. v. Progressive Northern Ins. Co.*, 703 N.W.2d 513, 516 (Minn. 2005).

¹⁵ *Hickman v. SAFECO Ins. Co. of America*, 695 N.W.2d 365, 369 (Minn. 2005); *Theile v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

DOC Exemption

Background

In its Notice and Order for Hearing, the Department listed two issues for resolution in this matter. The first issue is whether the Department had the authority to collect by revenue recapture the amount of the supervision fees from Mr. Nass. The second issue did not directly involve Mr. Nass but rather was a question of law. The question was whether the Department is required to utilize the contested case procedures of Chapter 14 for revenue recapture cases as specified by Minn. Stat. Ch. 270A or whether it is exempt from that requirement by operation of Minn. Stat. § 14.03, subd. 2(b). Although this can be seen as a request for an advisory opinion, it is framed as a question of law regarding jurisdiction in this matter. The ALJ therefore, responds to the jurisdictional question posed by the Department.

Rules and Authorities

The Minnesota Administrative Procedure Act (APA) sets forth state agency requirements in contested case proceedings.¹⁶ A contested case is “a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.”¹⁷ The statute exempts the Commissioner of the Department from contested case proceedings as they relate to “hearings held by the Department of Corrections involving the discipline or transfer of inmates or other hearings relating solely to inmate management.”¹⁸ In addition, and unrelated to the APA, the commissioner also bears the authority to determine the means to collect fees to offset costs related to correctional services.¹⁹

In the event an offender does not pay the assessed fee, the Department, as the claimant agency, can seek the collection of the debt through revenue recapture, a set-off against a tax refund through an APA-established process.²⁰ The Department must send written notification to its debtor indicating its right to all or part of the debtor’s tax refund.²¹ The notice must “clearly” and specifically state the grounds for the revenue recapture.²² The notice must also inform the debtor of the Department’s intention to request a setoff of the refund against the debt.²³ The notice must also “advise the debtor that the debt can be setoff against a refund unless the time period allowed by law for collecting the debt has expired” and must inform the debtor of their right to contest the claim’s validity at

¹⁶ Minn. Stat. ch. 14 (2008), *see* §§ 14.57-14.69.

¹⁷ Minn. Stat. § 14.02, subd. 3 (2008).

¹⁸ Minn. Stat. §§ 14.02, subd. 3, and 14.03, subd. 2(b) (2008).

¹⁹ Minn. Stat. § 241.272, subd. 2 (2008).

²⁰ Minn. Stat. § 270A.07 (2008).

²¹ Minn. Stat. § 270A.08, subd. 1(a) (2008).

²² Minn. Stat. § 270A.08, subd. 2(a) (2008).

²³ *Id.*

a hearing.²⁴ However, the debtor must assert this right by written request to the agency within 45 days of the mailing date of the original notice.²⁵ Once a debtor contests the revenue recapture and notifies the Department as such, the Department must initiate a hearing according to the contested case procedures set forth in the APA no later than thirty days after the debtor's hearing request.²⁶

Analysis and Application

A revenue recapture contested hearing is a contested case under the APA because it is "a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing."²⁷ The APA exemption for the Department does not apply to revenue recapture proceedings for two reasons. First, such hearings are not related to inmate discipline or transfers but are a civil collection process set up to recoup service fees. The issue in the present matter does not turn on disciplinary actions against the Respondent or on the transfer of the Respondent. Instead, the dispute focuses on recovering the unpaid supervision fee.

Second, in statutory interpretation, specific provisions and language control over more general provisions and language. The Canon of Statutory Interpretation *ejusdem generis*, "general words are construed to be restricted in their meaning by preceding particular words," reflects this notion.²⁸ "Contested case proceeding" in Minn. Stat. ch. 14 is a general provision with wide applicability. The Department's exemption from such proceedings in §14.03, subd. 2(b) is also general in nature. By contrast, the revenue recapture policy in Minn. Stat. ch. 270A creates a specific process in accordance with the "contested case procedures established in the state Administrative Procedure Act." The revenue recapture statute itself indicates that the process falls under the purview of the APA. Since the revenue recapture statute utilizes more specific language than the APA exemption, the former controls and thus bars the application of the Department's exemption under Minn. Stat. §14.03, subd. 2(b) to the present matter.

Furthermore, the Department, now and in the past, has complied with and availed itself of the particulars of the revenue recapture contested case procedure to recoup unpaid supervision release fees, thereby acknowledging the applicability of the contested case proceedings to Department-initiated revenue recaptures and the inapplicability of the exemption to the Department in such efforts. Since revenue recapture is a civil collection procedure that specifies the

²⁴ Minn. Stat. §270A.08 subd. 2(b) (2008).

²⁵ *Id.*

²⁶ Minn. Stat. §270A.09, subd. 1 (2008).

²⁷ Minn. Stat. §14.02, subd. 3 (2008). See also Minn. Stat. §270A.09, subd. 1 (2008).

²⁸ Minn. Stat. §645.08(3) (2008). See also *Lefto v. Hoggsbreath Enterprises, Inc.* 581 N.W.2d 855 (Minn. 1998).

use of contested case procedure, the Department's general exemption from APA contested case proceedings does not apply, and the Department is not exempted from the requirement to hold a contested case proceeding.

Appropriateness of Summary Disposition

Rules and Authorities

Under Minn. Stat. §241.272 and DOC Policy 201.013, issued June 3, 2008, non-juvenile and non-work release offenders must pay a supervision fee per case file in order to offset supervised release costs. Felony offenders must pay \$300 whereas gross misdemeanor and misdemeanor offenders pay \$200 and \$100, respectively. As per the DOC policy, Department staff enters the supervision fee assessment information into a database once an offender falls under Department supervision.²⁹ As of July 1, 2008, the Department assesses the fee to offenders under its supervision on the date each offense is sentenced.³⁰ The Department's policy establishes that "unpaid [balances] will be immediately submitted for revenue recapture upon an offender's revocation of probation and execution of sentence."³¹ The revenue recapture notice must also indicate the date the Department assessed the fee.³²

Analysis and Application

Since the Department is not exempted from the required contested case procedures, the matter turns on whether the Department is entitled to summary disposition as to the revenue recapture proceeding. The facts and the Department policy indicate that the agency imposes the fee as a flat fee at the beginning of the supervision period regardless of the duration of the supervision period. Therefore, it was appropriate for the Department to submit the unpaid balance for the revenue recapture after only a month of the supervised release when the Respondent was re-incarcerated upon breaching his release conditions.

Furthermore, the Respondent did not submit evidence during the motion hearing to establish any genuine issues of material fact. The Respondent's dispute with the Department rests in his opinion toward the supervision fee policy and not with the facts of the case. Since there is no genuine issue of material fact, the Department is entitled to summary disposition of the matter and the unpaid \$300 supervision fee.

²⁹ "Respondent's" Appendix, p. 7.

³⁰ "Respondent's" Appendix, p. 8.

³¹ *Id.*

³² *Id.*

Conclusion

The revenue recapture statute indicates that its contested claim measure falls under the APA's contested case procedures provisions. As such, the Department is not exempted from a revenue recapture contested case procedure. However, since the Respondent in fact violated the conditions of his supervised release and was subsequently re-incarcerated, the Department appropriately initiated measures to collect the supervision fee from the Respondent. Since the matter lacks any genuine issue of material fact, summary disposition of the case is therefore appropriate, and the Department is entitled to collect the \$300 supervision fee from Mr. Nass.

R. R. K.